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Original via US First Class mail
And via email to: WalterS@atg.wa.gov

February 8, 2017

Walter Smith
Assistant Attorney General
Washington Attorney General's Office
Campaign Finance Unit
P.O. Box 40100
Olympia, WA 98504-0100

Re: Citizen Action Notice – Washington Federation of State Employees
Our File No. 3389-001

Dear Walter:

We are writing in response to the letter you sent to Greg Devereux, Executive Director, Washington Federation of State Employees (‘WFSE’), on January 18, 2017, relating to a Citizen Action Notice filed against WFSE by the Freedom Foundation (‘Foundation’) on January 17, 2017. The undersigned is legal counsel for WFSE in this matter.

For the following reasons, the allegations made against WFSE by the Foundation, that it improperly failed to register its ‘separate, segregated fund’ (‘SSF’) as a political committee with the Washington State Public Disclosure Commission (‘PDC’) and also failed to have that SSF report its activities to the PDC as required by the Fair Campaign Practices Act (FCPA), are without merit. No action should be taken on those allegations by the Attorney General's Office.

Fundamentally, the Foundation's allegations lack merit because they are premised on the incorrect premise that an SSF that has been set up by a labor organization for political purposes is a ‘person’ subject to being characterized as a political committee under RCW 42.17A.005(37) if it receives contributions or, under certain circumstances, makes expenditures in support of, or in opposition to, candidates or ballot propositions. It is not. An SSF, as described above, is by definition not a separate ‘person.’ It is, instead, merely a separate bank account, or fund, within the total control of the labor organization that has created it. The significance of contributions made to, or expenditures made from, the SSF, may be examined in the context of an assessment of the status of the labor organization itself. But an SSF that is operated and funded solely by the labor organization that has created it may not itself properly be characterized as a political committee under any circumstances.

This was made clear by the PDC in a letter it sent to James Oswald, then an attorney with the firm of Davies, Roberts & Reid, on May 11, 1995. In that letter, a copy of which is enclosed as Exhibit A, the PDC confirmed that the PDC ‘does not believe’ that a local union is required

to register or report the activities of an SSF that is fully funded by the local union, even though the SSF engages in electoral political activity such as making contributions to state office candidates. The PDC wrote, in pertinent part, that “union political contributions made from the segregated account ... are tantamount to being made from its general fund and this activity does not trigger registration and reporting under the Public Disclosure Law, 42.17 RCW.”

This conclusion is also compelled by the common and long-recognized practice of organizations such as, but by no means limited to, labor unions, creating and operating SSFs in order to limit the tax consequences of their political expenditures. An SSF, by definition, has as one of its primary, if not its sole, purpose the intent “to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions.” Pursuant to *State ex rel. Evergreen Freedom Found. v. Wash. Educ. Assn*, 111 Wn. App. 586, 598-99, 49 P.3d 894 (2002), and the authority cited therein, every single SSF would therefore be an unlawfully unregistered political committee, were it not the case, as urged herein, that an SSF that exists merely as a separate fund of a different entity is not treated as a “person” at all for purposes of RCW 42.17A.005(37). That would be a radical and unjustified transformation of existing law and practice under the FCPA.

Nor does the fact that WFSE’s SSF has filed an IRS Form 8871 change this analysis. The obligation to file a Form 8871 flows from federal tax law, but does not materially change the nature or status of an entity. Every SSF has applied for an Employer Identification Number, which it does in order for the SSF to obtain its own bank account and be treated as a separate taxable entity. Whether or not the SSF exceeds the level of income that requires it to file an IRS Form 8871 (currently, \$25,000 in any calendar year) is irrelevant to whether it is, or is not, a separate “person” for purposes of RCW 42.17A.005(37).

Voters Educ. Committee v. Washington State Public Disclosure Com, 161 Wn.2d 470, 166 P.3d 1174 (2007), is not inconsistent with this conclusion. In that case, the Supreme Court, in trying to determine whether the Voters Education Committee (“VEC”) was or was not a political committee subject to the registration and reporting requirements of the Act, noted that it had previously registered as a Section 527 political organization under the Internal Revenue Code (i.e., by filing an IRS Form 8871). The majority decision observed that “the fact that VEC registered as a “political organization” under section 527 organization is a persuasive fact that indicates that VEC was seeking the tax benefits of section 527 while disingenuously seeking to avoid the disclosure requirements of the FCPA.” 161 Wn.2d at 491 n.14. But VEC was a stand-alone entity, not an SSF. Thus, the issue as to whether an SSF is properly analyzed as being a separate “person” subject to the registration and reporting obligations of the FCPA, or instead is examined only as one part of the organization of which it is merely a fund, was not raised.¹

¹ *Utter v. Building Industry Assn of Washington*, 182 Wn.2d 398, 341 P.3d 953 (2015) is similarly inapposite. The issue in that case was whether BIAW, because of its own electoral political activities, fell within the statutory definition of a “political committee” during the relevant time period. 182 Wn.2d at 412-413. There was no dispute that BIAW-MSC, a for-profit organization created by BIAW, itself a not-for-profit entity, was a separate “person” for purposes of RCW 42.17A.005(37). It was not simply an SSF operated by BIAW.

In the instant situation, there is no dispute that WFSE's SSF is managed, operated, funded and directed entirely by WFSE itself. Greg Devereux, WFSE's Executive Director, makes all final approvals of monies provided to and spent from the SSF. Regarding expenditures, Mr. Devereux receives requests from WFSE's Legislative and Political Action Department and then decides whether certain moneys should be spent. Mr. Devereux has the final say for all expenditures that are made from the SSF, as well as for all of the day-to-day expenditures involved in running WFSE and all contributions of money from WFSE to the SSF.

Finally, there is no basis for concluding that WFSE's SSF operated as a separate person because it allegedly has solicited money from sources other than WFSE. Assuming, without conceding, that an SSF that solicited or received funding from a source other than its sponsoring union might under some circumstances be characterized as a separate "person" under the FCPA, WFSE's SSF is not such a separately funded SSF. Instead, for the last five years, and longer, all of WFSE's SSF's funding has come to it from WFSE.

Concededly, the Citizen Action Notice has brought to WFSE's attention one anomaly in the otherwise very clear and unbroken record of WFSE having been the sole funder of its SSF. On September 27, 2012, a Thursday, a check for \$1300 that was intended to be donated by AFSCME Local 443 to the Committee to Elect Steve Fossum was apparently mistakenly made out to "WFSE Council 28," received by WFSE, and deposited into WFSE's SSF. See Exhibit B (WFSE's SSF's October 19, 2012, IRS Form 8872 filing), Schedule A; see also Exhibit C (WFSE's SSF's check and deposit register for September 27 through October 2, 2012), September 27, 2012, entry. On the second working day thereafter, the following Monday, October 1, 2012, WFSE forwarded this money to its intended recipient, the Steven J. Fossum Campaign. Exhibit C (October 1, 2012, entry relating to check number 1214); see also Dennis Eagle's Lobbyist Monthly Expense Report filed November 9, 2012, Exhibit D, fourth page. That campaign promptly (on October 7, 2012) and correctly reported this money as having been received on October 1, 2012, from its true source, AFSCME Local 443. See Exhibit E.

Clearly, this one extremely minor bookkeeping misstep, which resulted in no failure of transparency (i.e., the recipient candidate was able to, and did, properly report the true source of the funds) and at no time resulted in any net increase in the amount of money actually present in WFSE's SSF bank account,² does not vitiate the fact that WFSE's SSF has itself at all times pertinent hereto been funded solely by WFSE, under WFSE's sole control, and therefore that SSF does not meet the statutory definition of "person" so as to properly subject to any assessment as to whether "it" needed to register and report as a political committee.

In light of the foregoing, the answer to your question regarding "any disclosure requirements" WFSE had during 2016 is, "none." WFSE is not a political committee and has not been alleged to be one. WFSE's SSF is not a separate person subject to any reporting or disclosure requirements under the FCPA. The Citizen Action Notice is legally frivolous and no followup action regarding it should be taken by the Office of the Attorney General.

² Because WFSE's SSF wrote and delivered its check for \$1300 to the Committee to Elect Steve Fossum long before the check the SSF received from AFSCME Local 443 could even have cleared the bank, there is no evidence that the amount of money in the SSF's bank account ever actually increased as a result of having received that check.

Walter Smith
February 8, 2017
Page 4 of 4

If you have any follow-up questions on this matter, please do not hesitate to contact the undersigned.

Sincerely,


Dmitri Iglitzin
Counsel for WFSE

Enclosures

cc: Greg Devereux
Anita Hunter
James Oswald

Exhibit A



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm -103, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX: (360) 753-1112

May 11, 1995

James D. Oswald
Davies, Roberts & Reid
101 Elliott Avenue West #550
Seattle, WA 98119

Dear Jim:

In your letter of this date, you explain that a local union is considering establishing a segregated account for "Public Information Fund" activities, including the issuance of contributions to state office candidates.

Based on the information provided, PDC staff does not believe that the local union is required to register and report the segregated account as a political committee. Of particular significance in reaching this conclusion is the fact that the monies going into the information fund account originate with the union's general fund and are deposited into the segregated account at the discretion of the union Secretary/Treasurer. That is, no set amount of each member's union dues is earmarked for the information fund. In addition, as I understand it, there will not be any additional fund raising activities undertaken to augment these transfers from the general fund and, in fact, no monies other than these transfers will be deposited into the information fund account.

In summary, staff believes the union political contributions made from the segregated account described above are tantamount to being made from its general fund and this activity does not trigger registration and reporting under the Public Disclosure Law, 42.17 RCW.

However, should the union choose to register this segregated fund as a political committee, full reporting of all transfers into the account (contributions) and all expenditures made from it will be necessary. If this route is taken, the union PAC would not be restricted to receiving only transfers from the general fund, but could hold political fund raising events and accept additional contributions allowed by law. Let me know if this choice is made so we can provide additional information to the union.

Sincere!


Kirk L. Roberts, Director
Public Information and Policy Development

"The public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private."

Exhibit B

Political Organization
 Report of Contributions and Expenditures

OMB No. 1645-1596

See separate Instructions.

A 1701: the period beginning 10/01/2012 and ending 10/17/2012

B Check applicable box: Initial report Change of address Amended report Final report

1. Name or organization: Washington Federation of State Employees SSF
 Employer identification number: 27 - 4746485

2 Mailing address (P.O. box or number, street, and room or suite number)
 1212 Jefferson St SE Ste 300

City or town, state, and ZIP code
 Olympia, WA 98501

3 E-mail address of organization: susanh@wfse.org
 4 Date organization was formed: 02/01/2011

5a Name of custodian of records: Susan Hughes
 5b Custodian's address: 1212 Jefferson St SE Ste 300
 Olympia, WA 98501

6a Name of contact person: Liz Larsen
 6b Contact person's address: 1212 Jefferson St SE Ste 300
 Olympia, WA 98501

7 Business address of organization (if different from mailing address shown above), Number, street, and room or suite number
 1212 Jefferson St SE Ste 300
 City or town, state, and ZIP code
 Olympia, WA. 98501

8 Type of report (check only one box)

- First quarterly report (due by April 15)
- Second quarterly report (due by July 15)
- Third quarterly report (due by October 15)
- Year end report (due by January 31)
- Mid-year report (Non-election year only due by July 31)
- Monthly report for the month of: (due by the 20th day following the month shown above, except the December report, which is due by January 31)
- Pre-election report (due by the 12th or 15th day before the election)
 - (1) Type of election: general
 - (2) Date of election: 11/06/2012
 - (3) For the state of: WA
- Post-general election report (due by the 30th day after general election)
 - (1) Date of election:
 - (2) For the state of:

9 Total amount of reported contributions (total from all attached Schedules A) 9. \$ 1300

10 Total amount of reported expenditures (total from all attached Schedules B) 10. \$ 180100

Under penalties of perjury, I declare that I have examined this report, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Susan Hughes

10/19/2012

Sign
 Here

Signature of authorized official

Date

a14@ffi@d Itemized Contributions

Schedule A

Contributor's name, mailing address and ZIP code
WFSE Local 443
PO Box: 105
Olympia, WA 98507-0443

Name of contributor's employer
NIA
Contributor's occupation
NIA
Aggregate contributions year-to-date
\$ 1300

Amount of contribution
\$ 1300
Date of contribution
10/01/2012

Itemized Expenditures

Recipient's name, mailing address and ZIP code Committee to Elect Steve Fossum PO Box 6223 Olympia, WA 98507	Name of recipient's employer N/A Recipient's occupation N/A	Amount of Expenditure \$1000 Date of expenditure 10/01/2012
Purpose of expenditure Contribution		

Recipient's name, mailing address and ZIP code Working Families for the 26th 603 Stewart Street #819 Seattle, WA 98101	Name of recipient's employer N/A Recipient's occupation N/A	Amount of Expenditure \$10000 Date of expenditure 10/01/2012
Purpose of expenditure Contribution		

Recipient's name, mailing address and ZIP code Citizens to Retain Responsible Legislators PO Box 2532 Olympia, WA 98507	Name of recipient's employer N/A Recipient's occupation N/A	Amount of Expenditure \$2500 Date of expenditure 10/01/2012
Purpose of expenditure Contribution		

Recipient's name, mailing address and ZIP code 28th Legislative District Democrats 2125 Seaview Ave W University Place, WA 98466	Name of recipient's employer N/A Recipient's occupation N/A	Amount of Expenditure \$3000 Date of expenditure 10/02/2012
Purpose of expenditure Contribution		

Recipient's name, mailing address and ZIP code 2nd Legislative District Democrats PO Box 181 Entomville, WA 98328	Name of recipient's employer N/A Recipient's occupation N/A	Amount of Expenditure \$4500 Date of expenditure 10/02/2012
Purpose of expenditure Contribution		

Recipient's name, mailing address and ZIP code 44th Legislative District Democrats PO Box 14 Snohomish, WA 98291	Name of recipient's employer N/A Recipient's occupation N/A	Amount of Expenditure \$4500 Date of expenditure 10/02/2012
Purpose of expenditure Contribution		

Recipient's name, mailing address and ZIP code 45th Legislative District Democrats PO Box 2784 Redmond, WA 98073	Name of recipient's employer N/A Recipient's occupation N/A	Amount of Expenditure \$4000 Date of expenditure 10/02/2012
Purpose of expenditure Contribution		

Recipient's name, mailing address and ZIP code Inland NW Leadership PAC PO Box 832 Spokane, WA 99210	Name of recipient's employer N/A Recipient's occupation N/A	Amount of Expenditure \$5000 Date of expenditure 10/02/2012
Purpose of expenditure Contribution		

Recipient's name, mailing address and ZIP code Progressive Leadership PAC 603 Stewart Street #819 Seattle, WA 98101	Name of recipient's employer N/A Recipient's occupation N/A	Amount of Expenditure \$10000 Date of expenditure 10/02/2012
Purpose of expenditure Contribution		

Recipient's name, mailing address and ZIP code UpthePAC PO Box 13543 Des Moines, WA 98198	Name of recipient's employer N/A Recipient's occupation N/A	Amount of Expenditure 1500 Date of expenditure 10/02/2012
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Purpose of expenditure
Contribution

Recipient's name, mailing address and ZIP code Working Families for the 1st District 603 Stewart Street #819 Seattle, WA 98101	Name of recipient's employer N/A Recipient's occupation N/A	Amount of Expenditure \$ 5000 Date of expenditure 10/108/2012
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Purpose of expenditure
Contribution

Recipient's name, mailing address and ZIP code Working Families for the 5th District PO Box 9100 Seattle, WA 98109	Name of recipient's employer N/A Recipient's occupation N/A	Amount of Expenditure \$ 15000 Date of expenditure 10/08/2012
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Purpose of expenditure
Contribution

Recipient's name, mailing address and ZIP code Working Families for the 10th District PO Box 9100 Seattle, WA 98109	Name of recipient's employer N/A Recipient's occupation N/A	Amount of Expenditure \$ 30000 Date of expenditure 10/08/2012
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Purpose of expenditure
Contribution

Recipient's name, mailing address and ZIP code Working Families for the 25th District PO Box 9100 Seattle, WA 98109	Name of recipient's employer N/A Recipient's occupation N/A	Amount of Expenditure \$ 10000 Date of expenditure 10/08/2012
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Purpose of expenditure
Contribution

Recipient's name, mailing address and ZIP code Working Families for the 28th District PO Box-9100 Seattle, WA 98109	Name of recipient's employer N/A Recipient's occupation N/A	Amount of Expenditure \$ 20000 Date of expenditure 10/08/2012
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Purpose of expenditure
Contribution

Recipient's name, mailing address and ZIP code People's Progressive Leadership PO Box 20084 Seattle, WA 98102	Name of recipient's employer N/A Recipient's occupation N/A	Amount of Expenditure \$ 20000 Date of expenditure 10/08/2012
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Purpose of expenditure
Contribution

Recipient's name, mailing address and ZIP code Working Families for the 41st 603 Stewart Street #819 Seattle, WA 98101	Name of recipient's employer N/A Recipient's occupation N/A	Amount of Expenditure \$ 15000 Date of expenditure 10/08/2012
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Purpose of expenditure
Contribution

Recipient's name, mailing address and ZIP code Working Families for the 47th District PO Box 9100 Seattle, WA 98109	Name of recipient's employer N/A Recipient's occupation N/A	Amount of Expenditure \$ 15000 Date of expenditure 10/08/2012
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Purpose of expenditure
Contribution

Recipient's name, mailing address and ZIP code	Name of recipient's employer	Amount of Expenditure
House Republican Organizational Committee	N/A	1900
PO Box 7222	Recipient's occupation	Date of expenditure
Olympia, WA 98507	N/A	10/12/2012

Purpose of expenditure
Contribution

Recipient's name, mailing address and ZIP code	Name of recipient's employer	Amount of Expenditure
Strong Economy for the 44th	N/A	\$ 2500
603 Stewart Street 11-819	Recipient's occupation	Date of expenditure
Seattle, WA 98101	N/A	10/08/2012

Purpose of expenditure
Contribution

Recipient's name, mailing address and ZIP code	Name of recipient's employer	Amount of Expenditure
Citizens for Jim McIntire	N/A	\$ 500
PO Box 21941	Recipient's occupation	Date of expenditure
Seattle, WA 98111	N/A	10/12/2012

Purpose of expenditure
Contribution

Recipient's name, mailing address and ZIP code	Name of recipient's employer	Amount of Expenditure
Friends of Laurie Jenkins	N/A	\$ 300
PO Box 2032	Recipient's occupation	Date of expenditure
Tacoma, WA 98401	N/A	10/12/2012

Purpose of expenditure
Contribution

Recipient's name, mailing address and ZIP code	Name of recipient's employer	Amount of Expenditure
DIME PAC	N/A	\$ 600
314 Fill'ist Ave W	Recipient's occupation	Date of expenditure
Seattle, WA 98119	N/A	10/12/2012

Purpose of expenditure
DIME PAC pins

Exhibit C

Exhibit D

ERROR: syntaxerror
OFFENDING COMMAND: %ztokenexec_continue

STACK:

```
-filestream-  
def  
{rlineto }  
/rl  
def  
{rcurveto }  
/rc  
def  
{moveto }  
/m  
def  
{lineto }  
/l  
def  
{curveto }  
/c  
begin  
dict  
16  
initclip  
gsave  
0  
/GpPBeg1  
-dictionary-  
true  
false
```